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REMARKS

Reconsideration of the above-identified application in view of the amendments above and the remarks following is respectfully requested.

Claims 1-10 and 20-25 are in this case. Claims 3, 5, 10 and 24 were withdrawn by the Examiner from consideration under traverse of the Applicant as drawn to a non-elected invention. Claims 1, 2, 4, 6-9, 20-23 and 25 have been rejected under § 102(b) or § 103(a).

The claims before the Examiner are directed toward an unstable container for storing and dispensing alcoholic or carbonated beverages (claim 1) or which are formed as a metal can with a ring pull opening device (claim 20). Neither of these combinations is either anticipated or rendered obvious by the references cited by the Examiner, all of which relate exclusively to stable beverage containers.

Declaration under 37 CFR § 1.132

The Applicant submits herewith a Declaration under 37 CFR § 1.132 by Mr. Gideon Feiner, the CEO of Polymer Logistics. The declaration addresses the teachings of the Nohara et al. reference newly cited by the Examiner in the Final Rejection mailed September 1, 2005.

This declaration is timely filed after final rejection and no later than the date of filing of an appeal according to the provisions of 37 CFR § 1.116(e) and as detailed in the MPEP § 716.01 (A)(3).

Regarding the showing of good and sufficient reasons why the declaration is necessary, the declaration is necessary in order to demonstrate that the Examiner has based himself upon an incorrect understanding of the teachings of the Nohara et al. reference relied upon in the current rejections.

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Regarding the showing of good and sufficient reasons why the declaration was not earlier presented, this declaration could not have been submitted prior to final rejection since the Nohara et al. reference was cited for the first time in the Final Rejection mailed September 1, 2005.

Turning now to the content of the declaration, the declaration establishes that the bottle of Nohara et al. is an intermediate work product which is used with a cup-shaped stabilizing base, thereby rendering the bottle stable. Thus, Nohara et al. as properly understood by one skilled in the art in no way teaches or suggests that any round-bottomed bottle should be filled and sealed without addition of a stabilizing base.

Summary of Interview

Reference is made to a telephone interview conducted on November 29, 2005, between Examiner Stephen Castellano for the P.T.O. and Mr. Daniel Michaels, speaking under the auspices of Dr. Mark Friedman for the Applicant. The interview related to the § 102(b) rejection of independent claim 1 over the Nohara et al. reference, and the § 103(a) rejection of independent claim 20 over various combinations of references including Nohara et al. No agreement was reached as to the allowability of any claim.

The Applicant first pointed out that the Nohara et al. reference relates to a production method for conventional carbonated drink bottles, and refers to the well-known type of bottles in which a stabilizing base is attached to a round-bottomed clear plastic bottle. As such, the reference fails to teach an unstable container which is filled with a beverage and sealed, as appearing in current claim 1.

Furthermore, with regard to claim 20, the Applicant argued that the Nohara et al. reference cannot provide motivation to modify the can of the Esposito reference to

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provide an unstable base when the Nohara et al. reference itself does not mention a word about instability.

In reply, the Examiner challenged the Applicant to demonstrate from the Nohara et al. reference itself that the round-bottomed bottle appearing in the drawings is intended to be used with a stabilizing base. Although the Applicant considers it self-evident from the state of the art, and from the fact that Nohara et al. at no point relates to the highly unusual property of instability the Examiner is attributing to the document, the Applicant agreed that Nohara et al. does not explicitly mention the subsequent production step of adding a stabilizing base before use of the bottle. The Examiner stated that the Applicant's unsubstantiated arguments were not sufficient to establish that the bottle shown in Nohara et al. with a round bottom is intended to be used with a stabilizing base.

The Applicant thanks the Examiner for his time and cooperation.

§ 102(b) & § 103(a) Rejections – Claims 1-10 and 25

The Examiner has rejected claims 1, 7-9 and 25 under § 102(b) as being anticipated by Nohara et al. (US 4741936). The Examiner has also rejected claims 2, 4 and 6 under § 103(a) as being unpatentable over Nohara et al. in view of Esposito and Diekhoff et al. The Examiner has additionally rejected claims 1, 2, 4, 6-9 and 25 under § 103(a) as being unpatentable over Esposito in view of Nohara et al. The Examiner's rejections are respectfully traversed.

The Examiner's rejections are all premised on the assertion that Nohara et al. teaches an unstable bottle for beverages. The Applicant respectfully submits that the Examiner has misunderstood the teachings of Nohara et al., and that the reference does not in fact teach any unstable bottle for containing a beverage. The declaration submitted herewith clearly establishes by expert testimony that the Applicant's

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understanding is correct, namely, that the bottles of Nohara et al. are used with a stabilizing base attached thereto, thereby rendering them stable.

With this in mind, the Applicant respectfully submits that the invention as currently recited in independent claim 1 is not anticipated by Nohara et al. Specifically, claim 1 as before the Examiner recites an unstable container containing a volume of a carbonated or alcoholic beverage and sealed by a closure arrangement. Nohara et al. does not teach such a combination since the bottle of Nohara et al., when filled, is rendered stable by attachment of a stabilizing base.

Similarly, Nohara et al. cannot provide a motivation for modifying another document, such as Esposito, to employ an unstable base since Nohara et al. itself does not teach any unstable container.

In view of this argument, the Applicant respectfully submits that independent claim 1, and hence also dependent claims 2-10 and 25, are patentable over the Nohara et al. reference. Reconsideration of the § 102(b) and § 103(a) rejections of these claims are respectfully solicited.

§ 103(a) Rejections – Claims 20-23

The Examiner has rejected claims 20-23 under § 103(a) as being unpatentable over Nohara et al. in view of Esposito and Diekhoff et al. The Examiner has additionally rejected claims 20-23 under § 103(a) as being unpatentable over Esposito in view of Nohara et al. The Examiner's rejections are respectfully traversed.

The arguments made above in relation to claim 1 and as supported by the attached declaration are believed to be equally relevant and compelling with regard to claims 20-23.

In addition to these arguments, the Applicant wishes to further point out that the combinations of references proposed by the Examiner with regard to independent

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claim 20 are essentially flawed, even according to the Examiner's proposed understanding of Nohara et al.

Specifically, in the rejection of Nohara et al. in view of Esposito and Diekhoff et al., the modification is contrary to the teachings of Nohara et al. Nohara teaches a layered polymer structure as a partial solution to the inherent inferiority of polyester as a gas barrier compared to metal or glass. It would therefore be contrary to the teachings of Nohara to substitute metal for the layered polymer since it would undermine the entire purpose of Nohara. The combination would also be inoperative since metal is not susceptible to draw-blow-molding as provided by Nohara.

With regard to the rejection of Esposito in view of Nohara et al., here the Examiner has suggested a motivation to modify a flat or concave base to be convexly curved in order to increase the internal volume of the container. In response, the Applicant respectfully points out that, without the hindsight afforded by the present invention, the modification proposed by the Examiner would immediately be rejected by one ordinarily skilled in the art for the simple reason that it would render the modified container unstable and therefore unable to stand alone.

Thus, in addition to the fact that the Examiner has no source in any of the cited references for any unstable beverage container as argued above, the Applicant respectfully submits that the rejections of claims 20-23 are additionally flawed as stated. Reconsideration of the Examiner's rejections is respectfully solicited.

Non-Elected Claims

Withdrawn claims 3, 5, 10 and 24 depend from a generic base claim. The Applicant respectfully requests that these claims be given due consideration in the event that their respective base claims are found to be allowable.

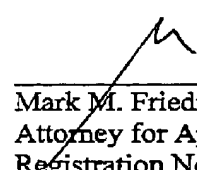
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In view of the above amendments and remarks it is respectfully submitted that independent claims 1 and 20, and hence also dependent claims 2-10 and 21-25, are in condition for allowance. Prompt notice of allowance is respectfully and earnestly solicited.

Respectfully submitted,



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Date: February 1, 2006